

**Farmer's Pride, Inc. and Local 876, Retail Store Employees Union, United Food and Commercial Workers International Union, AFL-CIO-CLC.**  
Cases 7-CA-18126 and 7-CA-18214

June 24, 1982

**DECISION AND ORDER**

BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING AND ZIMMERMAN

On January 21, 1982, Administrative Law Judge Michael O. Miller issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

**DECISION**

**STATEMENT OF THE CASE**

MICHAEL O. MILLER, Administrative Law Judge: This case was heard before me in Detroit, Michigan, on July 15, 16, and 17, 1981, pursuant to unfair labor practice charges filed by Local 876, Retail Store Employees Union, United Food and Commercial Workers International Union, AFL-CIO-CLC, herein called the Union, on August 13 (Case 7-CA-18126) and September 5, 1980 (Case 7-CA-18214), and an order consolidating cases and complaint and notice of hearing issued on behalf of the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 7 on September 30, 1980. The complaint was amended on November 3, 1980, and at hearing. The complaint alleges that Farmer's Pride, Inc., herein called

Respondent, violated Section 8(a)(1) and (3) of the Act and seeks, *inter alia*, a bargaining order remedy. Respondent's timely filed answers deny the substantive allegations of the complaint.

All parties were afforded full opportunity to appear, to examine and cross-examine witnesses, and to argue orally. Respondent's brief and the oral arguments of both the General Counsel and Respondent have been carefully considered. Based on the entire record,<sup>1</sup> including my observation of the witnesses and their demeanor, I make the following:

**FINDINGS OF FACT**

**I. RESPONDENT'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS—PRELIMINARY CONCLUSIONS OF LAW**

Respondent is a Michigan corporation engaged in the retail sale of produce, meat, and related products in Detroit, Michigan. Jurisdiction is not in dispute. Respondent annually derives gross revenues in excess of \$500,000 from its retail business operations and annually receives goods and materials valued in excess of \$50,000 directly from points located outside the State of Michigan. The complaint alleges, Respondent admits, and I find and conclude that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, Respondent admits, and I find and conclude that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Background—Union Activity**

The events involved in this litigation occurred during the summer of 1980.<sup>2</sup> Farmer's Pride is owned by Joe Shaya, Karl Meister, and Eric Meister. About December 1979, Shaya opened a second produce market, Cherry Hill, located about 6 miles from the Farmer's Pride store. It appears from the record herein, particularly the testimony of Karl and Eric Meister, that the Meisters did not become part owners of the Cherry Hill store until sometime subsequent to August.

The Farmer's Pride store was managed basically by the Meister brothers; one would work an early shift from the store's opening, and the other would work a late shift until closing. Shaya, it appears, was not directly involved in the supervision of the employees at Farmer's Pride. His basic responsibility was at the Cherry Hill store. Shaya visited the Farmer's Pride store only two or three times a week and was not personally familiar with its employees. Respondent stipulated that Shaya, Karl, and Eric were supervisors for Respondent and its agents within the meaning of Section 2(11) of the Act.

<sup>1</sup> Respondent's unopposed motion to correct the official transcript is hereby granted.

<sup>2</sup> All dates hereinafter are in 1980 unless otherwise specified.

The union activity began with discussions between employees Elizabeth Silverthorn and Darlene Butcher around July 10. Each of them called the union office. Silverthorn arranged for an organizational meeting to be held at her home following work on July 14.<sup>3</sup> The meeting began in the late evening hours and was attended by approximately 12 employees in addition to Silverthorn and Union Business Agent Vance Palmer. Authorization cards were distributed and explained to and signed by 13 employees. Subsequently, Silverthorn received signed authorization cards from five additional employees, cards which were signed either at her home or at work. Butcher secured the signatures of three more employees while at work. In all, 21 cards were turned over to Palmer.<sup>4</sup>

On July 21, Palmer and another union representative went to Respondent's store carrying a letter asserting that the Union represented a majority of Respondent's employees and requesting recognition based on that assertion. They met with Karl and Eric Meister and, apparently ignorant of the fact that the Meisters were part owners, asked for Shaya or another individual who had previously been involved in Respondent's ownership. Karl Meister told Palmer that Shaya was not there. Palmer attempted to give Karl the letter; Karl would not take it.<sup>5</sup> Palmer left it, unread, with someone in the store. Upon leaving the store, Palmer went to the law office of John J. Mallon, Respondent's attorney in this litigation. He did so, he testified, because he believed (but was not entirely sure) that Karl had told him that Mallon was Farmer's Pride's attorney. A copy of the demand letter was left in Mallon's office.<sup>6</sup>

On leaving attorney Mallon's office, the agents went to the Board's Regional Office where they filed a representation petition, Case 7-RC-15992, seeking an election among Respondent's employees in the following admittedly appropriate collective-bargaining unit:

All full-time and regular part-time employees of the Employer's store located at 19848 Joy Road, Detroit, Michigan, excluding the store manager, assistant store manager, and supervisors and guards

<sup>3</sup> Silverthorn incorrectly referred to July 14 as having fallen on a Sunday; the calendar reveals that July 14 was a Monday.

<sup>4</sup> The employees received a two-part card with instructions to read, separate, and retain the upper half. That portion of the card explained in clear and simple terms the purpose to which the card would be put; i.e., that the Union would seek recognition from the Employer based on a showing to an impartial person that a majority of the employees had signed the cards and that, if its request for a card check were rejected, the Union would petition the Board for an election. There was no evidence that any of the employees were told anything inconsistent with the information contained on these cards. Some of the cards were misdated by the signers and one was undated but the record is clear that all were signed during the week prior to the filing of the petition on July 21.

<sup>5</sup> Karl Meister's testimony essentially corroborates that of Palmer. He testified that Palmer "tried to hand me a piece of paper," thereby implying that he had refused to accept it.

<sup>6</sup> Respondent testified that attorney Mallon had not been retained until at least a week after this July 21 meeting. Attorney Mallon represented that his files showed no copy of the demand letter and further represented (both without taking the stand) that his office was known by many people as frequently representing the retail store owners of Shaya's ethnic background. The alleged letter demanding recognition was never offered into evidence.

within the meaning of the National Labor Relations Act.<sup>7</sup>

Pursuant to this petition, an election was scheduled for September 19. It was never held.

Karl and Eric Meister contend that this visit from Palmer was their first knowledge of the union activity among their employees. Shaya, who left on vacation on July 19, contends that he was not informed of the union activity until he received a telephone call from Karl Meister on July 23, upon Meister's receipt of the representation petition.

A second union meeting was held at Silverthorn's home on July 24.

#### *B. Respondent's Transfer of Employees*

On July 18, Joe Shaya came to the Farmer's Pride store and asked Karl Meister for the loan of two experienced employees, one for the delicatessen and one to work the floor, for a period of 2 weeks. He explained that he had recently lost two employees and was himself leaving on a vacation of 10 days to 2 weeks. Shaya told Karl that he was willing to pay them more than they were presently making as an inducement. Karl replied that it would be difficult but he would find Shaya a couple of employees. He recommended Dan Schwab and Darlene Butcher. Both of these employees had sought wage increases from Karl and were thus known to him to be interested in earning some additional money. Both were among Respondent's more experienced employees.

Shaya then approached both Butcher and Schwab. He told Butcher that he needed an experienced person to work in the deli and that he would compensate her for the extra driving and reward her if she did a good job. Shaya asked Butcher to watch out for stealing by employees and customers and to tell him what had been going on when he returned. As Butcher recalled the conversation, Shaya promised her \$50 for each employee she caught stealing from Cherry Hill. She agreed to accept the transfer on the condition that she be out of that store prior to any action being taken against anyone she had reported.<sup>8</sup> Shaya's conversation with Schwab was essentially the same. He promised to raise Schwab's pay to \$4 an hour in addition to offering him a \$50 bonus for information on employee theft. Both Butcher and Schwab were told that the transfer to Cherry Hill would only be for 2 weeks while Shaya was out of town.

Butcher and Schwab reported to work at the Cherry Hill store on July 19. The work to which they were assigned was essentially identical to the work they had been performing at Farmer's Pride. During his short stint at Cherry Hill, Schwab visited the Farmer's Pride store regularly. He told Karl that he liked working at Cherry Hill particularly because he finished work early. He also reported to Karl that he did not believe that the employees were as well trained there as they were at Farmer's

<sup>7</sup> The payroll journal for the week ending July 20 contains the names of 27 employees, 4 admitted supervisors, and 1 individual, Nowakowski, whose status was in dispute.

<sup>8</sup> Shaya did not contradict this testimony.

Pride. Both he and Butcher criticized the operation of the Cherry Hill store in their conversations with Karl.

Schwab soon began to experience problems with other Cherry Hill employees, problems which may have been of his own creation. He had an argument with one female employee, which that employee interpreted as threatening to her; she told some of her fellow employees about it. Another employee heard that Schwab had accused him of smoking marijuana in the store's cooler and confronted Schwab. He told Schwab that he did not like people spreading false rumors about him. No threats were exchanged. On July 25, Schwab had an incident or run-in with Richard Anusbighian, a summer employee and one of the sons of the Cherry Hill store's manager. According to Schwab's description, Anusbighian came up to him and held the large knife that the employees all carry and use for the trimming of vegetables against his neck. He told Schwab, "Either you tell me what you want or I'm going to cut you here . . . Why are you guys doing what you are doing here, going around telling lies and stuff . . . and making it hard for other people to work here?" At this point, Butcher walked up, observed the scene, and asked what was going on. Anusbighian told her that they were just fooling around and walked away. As he did so, according to Schwab, he told Schwab, "Don't come back to the store because I'm going to make it harder for you . . . your days are numbered." Several minutes later, Anusbighian approached Butcher and asked her whether she was a "snitch" or "narc"<sup>9</sup> like her friend. She asked what he was talking about and Anusbighian told her, "You know, going around telling them that we're smoking pot, drinking beer and goofing off and stealing." She asked whether anything like that was going on and he replied that her friend thought so.<sup>10</sup>

Following this incident, Schwab and Butcher jointly decided to leave the Cherry Hill store, punched out, and returned to Farmer's Pride. They told Karl Meister of the knife incident<sup>11</sup> and Karl referred them to Shaya, who had been called back from his vacation. Schwab and Butcher then told Shaya of the incident and refused to return to work at Cherry Hill, at least in the absence of some additional support from other Farmer's Pride employees. Shaya indicated his disbelief of their version of the incident and told Schwab that he could not afford to send any additional people to back them up. They refused to go back to Cherry Hill, giving as their reasons their fear of bodily harm and the objections of Butcher's

husband and Schwab's parents. Shaya asked each of them, in essence, whether they had to obey the directions of spouse or parent. He refused to permit them to return to work at Farmer's Pride until they had each completed the 2-week employment obligation at Cherry Hill. Their requests to return and Shaya's rejection of those requests until they worked another week at Cherry Hill were repeated in telephone conversations several times after July 25. Shaya's version of these conversations differs only slightly. He stated that he assured each of them that he would take care of the problems and that there was no danger and he told Butcher that he was still on vacation. He said she could return to Farmer's Pride when that vacation was concluded. He acknowledged that both Butcher and Schwab were experienced and competent employees and that such employees were needed at both stores. His only reason for not permitting them to return to the Farmer's Pride store, he testified, was his desire that they complete their second week of employment at Cherry Hill.

In the week following the knife incident, Schwab and Butcher asked Karl Meister if they could come back to work at Farmer's Pride. He told them that he had no objection but that they would have to clear their return with Shaya.

About July 30, Shaya asked Karl Meister for two more experienced employees, saying that he was still short-handed and needed them for another week or two to help him get through the busy weeks of the summer. Karl recommended Peggy Nowakowski and Elizabeth Silverthorn, both of whom were experienced workers but those whom Karl felt he could spare. As indicated above, Silverthorn had been at the center of the union organization campaign, making the initial contact with the Union, holding two meetings at her home, and soliciting employees to sign authorization cards at her home and at work. Nowakowski was, around that time, romantically linked to Karl Meister (she ultimately became Mrs. Meister) and occupied a position within the Farmer's Pride store which the General Counsel contends was supervisory.<sup>12</sup> Nowakowski had been on vacation sometime during the week preceding July 21, returning to work on that day, and had not been involved in any of the union activity.

Shaya then asked Silverthorn "if she would like to go to [Cherry Hill] because [he was] short of help and [he] heard that she had the experience." Silverthorn told Shaya that she would have to talk with her husband first and, it appears, mentioned that she had a transportation problem in getting to and from the Cherry Hill store.<sup>13</sup>

Shaya then "asked [Nowakowski] if she could do me a personal favor and go [to Cherry Hill] because I need the help." He told her that it would be for a week or two and she agreed. She also agreed to provide transportation to and from Farmer's Pride for Silverthorn.

<sup>9</sup> "Narc" is a street expression for a police agent or informer engaging in surveillance regarding the sale or use of narcotic substances.

<sup>10</sup> Richard Anusbighian acknowledged that he had a confrontation with Schwab concerning statements made by Schwab about marijuana smoking and employees throwing things out. He admitted that he may have asked Schwab whether he was a "narc" but denied threatening Schwab with a knife or telling him anything like "your days are numbered." In this regard, he did admit that he carried a knife for use in his work and may have gestured with it or pointed it in Schwab's direction. He did not see Butcher during this confrontation and had no recollection of speaking to her on that day. In view of the extent to which Anusbighian's recollection corroborates that of Schwab, I deem it unnecessary to resolve any of the relatively minor credibility conflicts existing between them. I credit Butcher's recollection of her conversation with Anusbighian.

<sup>11</sup> Karl Meister described them as appearing "a little upset about the matter" at that time.

<sup>12</sup> In view of my resolution of the credibility issues concerning statements attributed to Nowakowski, I deem it unnecessary to resolve the supervisory issue.

<sup>13</sup> Silverthorn testified that she also tried to tell Shaya about her need to be near her children, which need was satisfied while working at Farmer's Pride, but Shaya cut short her attempt to describe these problems.

Shortly after their first conversation, Silverthorn went back to Shaya and told him that she did not think that her husband would agree to her going to Cherry Hill. Shaya "told her we didn't hire her husband, we hired her. And she got to go."<sup>14</sup> Silverthorn asked whether she was terminated and Shaya told her, "No, you just go to Cherry Hill and spend two weeks and come back."

In the 15- or 20-minute period between her first and second conversation with Shaya on July 30, Silverthorn claims to have spoken with Nowakowski. Nowakowski, she said, asked her why she was so upset. Silverthorn told Nowakowski of her conversation with Shaya and said that she thought it was unfair. Nowakowski told her "that she didn't understand all her friends there because they all knew about trying to get a union in" and kept it from her. Nowakowski allegedly stated her surmise that the employees feared she would tell Karl. She protested that she would not have done so. She allegedly told Silverthorn that while she had been on vacation (in the week prior to July 21) Karl had called her and asked whether she knew anything about a union. She then allegedly related to Silverthorn that "Karl had told her that Joe [Shaya] had told him the reason he wanted Dee [Butcher], Silverthorn and Dan [Schwab] out of the store was because he felt that we started the union business and with us out of the way, all these other kids would fall apart. And she [Nowakowski] said that she hoped we got it in." Nowakowski allegedly also told Silverthorn that Karl had told her that Shaya knew of every union meeting, where it was held and who was there. Nowakowski denied making any of the foregoing statements to Silverthorn. She also denied having had any conversation with Karl concerning the union activity while she was on vacation and denied that Karl could have called her during that period, claiming he did not know where she was. In this, Nowakowski's testimony is corroborated by that of Karl Meister. Considering all of the foregoing, I am inclined to credit Nowakowski's denials. Silverthorn had been quite firm in her testimony that this conversation occurred between her first and second conversation with Shaya but it is not logical that it would have occurred at that time; Shaya had not mandated her transfer to Cherry Hill in their first conversation and thus there was little, if any, reason for Silverthorn to appear upset and deem herself unfairly treated at that point in time. Moreover, Silverthorn testified that Darlene Butcher heard this conversation and commented on it to her. She was confused or in error about whether Butcher was working at the time. Butcher was not employed by Farmer's Pride on August 30 but, according to Butcher's testimony, was in the store on that day and saw Nowakowski and Silverthorn in conversation. She did not hear what was said in that conversation and thus could not have indicated to Silverthorn that she heard the conversation.

<sup>14</sup> Silverthorn recalled explaining that her husband would object to her being transferred to a more distant store without having her own transportation because of her need to be able to come back to her children if anything happened. She further recalled Shaya telling her that he had the right to transfer her and that she could listen to her husband when her husband signed her paycheck. The differences in the testimony given by Shaya and Silverthorn are not so great as to require a resolution of credibility.

### *C. Alleged Interference, Restraint, and Coercion— Other Evidence of Alleged Knowledge and Animus*

Sometime between the first (July 14) and the second (July 24) union meetings, Karl Meister had a brief conversation with one of Respondent's truckdrivers, Bill Lewton, which was overheard by Elizabeth Silverthorn. Karl Meister recalled this conversation as having occurred subsequent to Union Business Agent Palmer's visit to the store on July 21. According to Karl's version of this conversation, which I credit because of the candor reflected therein and because Silverthorn admittedly only heard a portion of the conversation, Lewton initiated the conversation by stating that the employees were organizing and trying to get an election. He asked how Karl felt about it and Karl replied that it was up to the employees, that he "really didn't like it but there wasn't much [he] could do about it if that's what they wanted." Karl Meister denied asking Lewton questions about the union or union elections and he denied making the statement attributed to him by Silverthorn that management was "trying to be nice guys . . ."<sup>15</sup>

Elizabeth Silverthorn testified in regard to a conversation she allegedly held with Eric Meister on July 24, prior to the second union meeting. She claimed that Eric Meister asked her, in that conversation, "Elizabeth, what's this I hear about a union?" To her response that she did not know what he was talking about, Eric allegedly called her a "damn liar" and "fucking liar" and said that she "better hope that the union got in because if it didn't [she] would be out of a job." Then, to her statement that he had better have a good reason to fire her, he allegedly stated, "There's other ways of getting rid of you." Eric Meister credibly denied discussing the Union with Silverthorn on July 24 or at any other time. He specifically denied calling her a liar, swearing at her, or threatening her job security in the words she attributed to him or any others. He also denied directing obscene language generally at his employees or other people and that denial is uncontradicted. Considering Eric Meister's credibly offered denials, the absence of any other unlawful conduct attributed to him, and the inconsistencies between Silverthorn's direct and cross-examination testimony in such areas as the involvement of Joe Shaya in her hiring, I must conclude that the General Counsel has failed to sustain his burden of proving that Eric Meister either interrogated or threatened Elizabeth Silverthorn on July 24 as alleged in the complaint.

Jacqueline Stodor, an employee of Farmer's Pride from June until September 1980, testified that in late July or early August Joe Shaya initiated a conversation with her wherein she was asked whether she had signed a union card or had gone to any union meetings and what her feelings were concerning the Union. She further testified that Shaya told her that he could get in trouble for asking her such questions, to which she replied that she was aware of that fact "so [she] asked him for a raise." In a second conversation about 2 weeks later, which Stodor did not recall having participated in until she was

<sup>15</sup> The General Counsel does not allege this conversation as a violation of the Act.

shown her affidavit on cross-examination, Stodor again asked Shaya about a raise and was told that Shaya could not give one to her "because it would look like bribery." Shaya, who had little recollection of Stodor as an individual, denied talking about the Union with her. As he recalled the events, Stodor introduced herself to him and told him she needed a wage increase. When she said, "There is something going on here and I'm a neutral," he told her that he did not want to hear anything, that he had been advised by his attorney not to talk to anyone, and that if she needed a raise he would have to discuss it with his attorney and Karl Meister. In this, as in the foregoing incidents, I am constrained to find that the General Counsel has failed to sustain his burden of establishing the unlawful interrogation. Stodor's testimony, containing a patent attempt to utilize Shaya's allegedly illegal conduct to garner a wage increase, and the inconsistency, until corrected, between her testimony and her affidavit in regard to whether she had a second conversation with Shaya, leaves me unconvinced that Stodor's testimony was more accurate or truthful than that given by Shaya.

Darlene Butcher testified that during a visit to the Farmer's Pride store on August 29, while she was talking to him about another matter, Joe Shaya asked her why she had "slap[ped] a lawsuit on [him]."<sup>16</sup> She allegedly told him that she had been advised to do so by a lawyer and he told her that she would never get back into the store by September 19 (the date on which the union election was scheduled). That, she stated, was the reason why she was fighting. Shaya allegedly responded, "That's why I got rid of you, Liz and Dan. You'll never get back in here." Shaya denied having any such conversation and could recall no conversation with Butcher on or about August 29. I am inclined to credit Shaya. The charges and the General Counsel's complaints allege an elaborate subterfuge by Respondent to eliminate three union adherents. The record reveals Shaya to have been perhaps arbitrary in regard to his insistence upon employees accepting transfers and completing what he deemed to be commitments in regard to those transfers; it does not reveal him to be so naive or blatant as to confess discriminatory motivation to one of the alleged discriminatees, thereby disclosing the alleged subterfuge. Such candor is improbable. Accordingly, and noting Shaya's credible denial of this conversation, I find that the General Counsel has failed to sustain his burden of proving that "Respondent, by its agent Joe Shaya, threatened its employees by indicating it would fail to recall them because they gave testimony under the Act."

During the hearing, the General Counsel amended the complaint to allege that Respondent's promise and granting of bonuses or wage increases to Butcher and Schwab in return for their agreement to transfer to Cherry Hill on July 18 was for the purpose of discouraging union activities. As discussed, *infra*, I have concluded that Respondent had no knowledge of the union activity as of

July 18. For that reason, *inter alia*, I must conclude that this allegation must fall.<sup>17</sup>

#### D. Conclusions in Regard to the Alleged Discrimination

The General Counsel contends that Respondent discriminatorily transferred union supporters Darlene Butcher and Dan Schwab and subsequently terminated them by refusing to permit them to transfer back to the Farmer's Pride store. The evidence, I believe, fails to sustain these contentions. Neither of these individuals were outstandingly active in the Union's behalf; Schwab merely signed a card and Butcher's alleged leadership role consisted of conversations with Silverthorn, one preliminary telephone contact with the Union wherein she did not even leave her name, and three card solicitations. There is no credited evidence to establish that Respondent knew of the union activity in general or the activity of Butcher and Schwab in particular prior to the transfer on July 18. The questionable referral of Palmer to attorney Mallon's office, even if accepted at face value, does not establish such knowledge. And, logic would indicate that Respondent, particularly Shaya, was unaware of the activity among the Farmer's pride employees. Had he been aware of that activity it is improbable that he would have departed for an extended vacation on July 19. Moreover, had he been aware of the union proclivities of Butcher and Schwab, it is unlikely that he would have transferred them from the store where those activities were in process to a union-free environment where they might have been expected to engage in similar activities. Finally, in this regard, it appears that Shaya, having lost two employees and himself leaving the store for a period of 2 weeks, had a legitimate business reason for seeking the temporary transfer of experienced persons to his Cherry Hill store.

Similarly, I find insufficient evidence to support the contention that Respondent discriminatorily refused to permit Butcher and Schwab to return to Farmer's Pride and discriminatorily insisted upon the transfer of Silverthorn to Cherry Hill. Shaya's need for these employees at Cherry Hill was legitimate; indeed its legitimacy was supported, in part, by the transfer of Nowakowski to that store when Butcher and Schwab refused to continue their assignment there. The record indicates, although somewhat generally, that Respondent did regularly transfer employees between the commonly owned stores and it cannot be said that an employer's insistence upon the flexibility to engage in such transfers, particularly where small complements of employees are involved, is so unreasonable to warrant a conclusion of illegal motivation. Moreover, in order to conclude that Shaya insisted upon Butcher and Schwab's completion of their temporary assignments or on Silverthorn's acceptance of such a temporary transfer in order to provide an excuse to terminate them, one would have to conclude that he anticipat-

<sup>16</sup> The unfair labor practice charge alleging that Butcher had been discriminatorily discharged was filed on August 13 and served on Respondent on August 15.

<sup>17</sup> Apart from the question of knowledge, there is no evidence to support the contention that the promised wage increases or bonuses were intended to discourage union activities. Indeed, such a contention would appear to be inconsistent with the General Counsel's assertion that the transfers themselves were discriminatorily motivated.

ed or foresaw their refusal of his demands. Inasmuch as Richard Anusbigian, the alleged protagonist in the knife incident, was no longer working at Cherry Hill, thus removing the major element of the supposed threat to Butcher and Schwab, Shaya could not have anticipated that they would refuse to return. Neither could he have anticipated that Silverthorn would have refused his demand that she transfer to Cherry Hill. Moreover, if Shaya had sought an excuse to discharge Silverthorn, it is not probable that he would have arranged transportation for her to and from the Cherry Hill store. And, as with the transfers of Butcher and Schwab, it is improbable that Shaya would have sought to transfer Silverthorn to Cherry Hill where she could have sown the seeds of unionism had he known that she was the leading union proponent in the Farmer's Pride store.

The issue is not, of course, entirely one-sided. Butcher, Schwab, and Silverthorn were all experienced, competent, and valuable employees at Farmer's Pride and there is little question but that their services could have been used there. Moreover, Shaya's treatment of them seems, as previously noted, harsh in light of their expressed objections to working at Cherry Hill. His conduct, however, was not so arbitrary or unreasonable as to support a conclusion of discrimination. Considering all of the foregoing, and the fact that I have found no independent violations of Section 8(a)(1) of the Act or other evidence

of animus in regard to the employees' union activities, I must conclude that the evidence will not support the complaint's allegations of 8(a)(3) discrimination. Accordingly, I shall recommend that these allegations be dismissed.<sup>18</sup>

#### CONCLUSION OF LAW

Respondent has not engaged in the unfair labor practices alleged in the complaint.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issued the following recommended:

#### ORDER<sup>19</sup>

The complaint herein is dismissed in its entirety.

<sup>18</sup> Having found no violations of Sec. 8(a)(1) or (3) of the Act, there is, *a fortiori*, no basis on which to consider a bargaining order remedy. It therefore becomes unnecessary to determine whether the Union represented a majority of Respondent's employees at any relevant time.

<sup>19</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.